In the High Court of Punjab & Haryana at Chandigarh.

Civil Revision No.1472 of 2006.

Date of decision:20.3.2007.

Punjab Agricultural University and another.

...Petitioners.

Versus

Kuldip Chand Bhargav and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.O.P. Gupta Advocate for the petitioners.

None for the respondents.

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Judgment.

S. N. Aggarwal, J.

As per office report, contesting respondent was served through his son. None is present on his behalf. He is proceeded against ex parte.

Respondent No.1 filed a civil suit against the petitioners for a declaration that he was entitled to the selection grade for the post of S.D.E (Public Health). The said suit was resisted by the petitioners.

Issues were framed.

Respondent No.1 filed an application for summoning of an official from the petitioners with the following record:-

"i) File containing orders (none) of the former Vice Chancellor, Sh. G.S.Kalkat regarding grant of Senior/Selection

Grade to Sh.K.C.Bhargav.

ii) File containing the recommendations of the Estate Officer-cum-Chief Engineer, PAU, Ludhiana on the case for the grant of Senior Scale of Selection Grade to K.C.Bhargav alongwith the legal advice obtained from the legal advisor of PAU.

Iii) Personal file of Kuldeep Chand Bhargav SDE (PH) containing correspondence regarding selection grade."

It was opposed by the petitioners but the learned trial Court vide impugned order dated 3.1.2006 rejected the objections filed by the petitioners.

Hence, the present petition.

The submission of learned counsel for the petitioners was that the record summoned by respondent No.1 was confidential record and, therefore, could not be summoned by the trial Court as it was violative of provisions of Sections 123, 124 and 126 of the Indian Evidence Act. Sections 123, 124 and 126 of the Indian Evidence Act read as under:-

"123. Evidence as to affairs of State.-No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. Official communications.-No public officer shall be compelled to disclose communications to him in official confidence, when he considers that the public interest would suffer by the disclosure.

126. Professional communications.-No barrister, attorney, pleader or vakil shall at any time be permitted,unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client,or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment,or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure-

(1) Any such communication made in furtherance of any (illegal) purpose;

(2 Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is material whether the attention of such barrister (pleader), attorney or vakil was or was not directed to such fact by or no behalf of his client.

Explanation.-The obligation stated in this section continues after the employment has ceased."

The learned trial Court vide impugned order has summoned the record from the office of the petitioners which contains previous orders passed on the file by the previous Vice Chancellor or the legal advice

obtained from the legal advisor or the correspondence which was exchanged between the officers of the petitioner-University. Obviously, this record is covered by Sections 123, 124 and 126 of the Indian Evidence Act and, therefore, it is protected piece of evidence. Reliance can be placed on the judgment of Delhi High Court reported as **H.L.Rodhey and others v.Delhi Administration and others,** AIR 1969 Delhi 246 in which it was held that where the Government employee challenges his reversion from the officiating post, non disclosure of such documents was necessary for proper functioning of public service.

Therefore, the impugned order dated 3.1.2006 suffers from legal infirmity and is accordingly set aside. This petition is accepted.

March 20,2007. (S. N. Aggarwal)
Jaggi Judge